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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

LESTER KNISPEL, as Trustee, etc.,

Plaintiffs and Respondents,

v.

MICHAEL SCOTT SHORE,

Defendant and Appellant.

B270450

(Los Angeles County
Super. Ct. No. BS149136)

APPEAL from a judgment of the Superior Court of Los Angeles County. Suzanne G. Bruguera, Judge. Affirmed.

Tepper Law Firm and Nicholas Tepper for Defendant and Appellant.

Oldman, Cooley, Sallus, Birnberg, Coleman & Gold, Marc L. Sallus and Justin B. Gold for Plaintiffs and Respondents.

Appellant Michael Scott Shore seeks to set aside a judgment confirming an arbitration award issued by Judge Aviva K. Bobb (Ret.) on the ground that Judge Bobb failed to disclose she and Respondents' attorney, Marc L. Sallus, were members of the Los Angeles Lawyers Philharmonic Group together. We affirm the judgment.

FACTS

This matter involves a dispute over property located on Sunset Boulevard in Hollywood.¹ Respondents are Lester Knispel, Trustee of the Archie Butter Trust and Paul Shore (hereinafter Respondents). The parties agreed to arbitrate the matter before Judge Bobb at the Alternative Resolution Center (ARC). Judge Bobb also served as the arbitrator in a separate action between the parties. She issued an award in favor of Respondents on June 16, 2014, and they petitioned the trial court to affirm the award on June 27, 2014. A first amended petition was filed on September 29, 2014, to incorporate an award of attorney's fees and costs into the petition.

On October 1, 2014, Appellant filed his opposition, contending the arbitrator failed to make timely disclosures to him about having previously served as an arbitrator or mediator with Sallus' law firm on over forty occasions in the past three years. Further, Appellant argued Judge Bobb failed to disclose at any time the fact that she and Sallus had both been members of the Lawyers Philharmonic, for which they "have been practicing and performing together . . . since at least November 2010." According to Appellant, he would not have selected Judge Bobb and would have objected to her appointment if he or his counsel

¹ We need not elaborate on the dispute as it is irrelevant to the issue presented on appeal.

had known of this purportedly close personal contact. He only discovered this fact from “a friend” in September 2014, after the arbitration award had been issued.

Respondents presented Sallus’ declaration in support of their petition, which stated he played trombone and baritone (a smaller version of a tuba) in the Lawyers Philharmonic. The Lawyers Philharmonic is comprised of approximately 150 to 175 musicians who are lawyers, judges, justices, paralegals and others involved in the practice of law and it performs three or four times a year. Judge Bobb also submitted a declaration which explained her role in the group; she played the violin, but she had not been a part of the group for about a year. Both Sallus and Judge Bobb affirmed that “string” players had little contact with “brass” players and there was no opportunity during rehearsal or performance for them to communicate. The only interaction either of them had with one another while they were members of the Philharmonic was if they ran into each other, they would exchange basic pleasantries.

The trial court granted the petition to confirm the arbitration award. In connection with its ruling, it found, in pertinent part, “that Judge Bobb (a violin player) and Mr. Sallus (who plays the trombone) both played in the Los Angeles Lawyers Philharmonic. The Court further finds there is zero evidence of any personal relationship between Judge Bobb and Mr. Sallus, and consequently, there was no need to disclose participation in the Philharmonic. The Court specifically finds the Declarations of Marc L. Sallus and the Hon. Aviva K. Bobb, Ret. to be persuasive. Both Declarations establish that the contact between Mr. Sallus and Judge Bobb was minimal at most, and that they

did not interact with each other at all, other than to exchange pleasantries every once in awhile.”

The judgment was issued December 18, 2015 and notice was given December 29, 2015. Appellant timely filed his notice of appeal.

DISCUSSION

Appellant challenges the trial court’s confirmation of the arbitration award on the sole ground that Judge Bobb’s failure to disclose her participation in the Philharmonic with Sallus created an impression of bias under Code of Civil Procedure 1281.9, subdivision (a),² which warrants vacation of the award. Appellant contends a reasonable person would have entertained a doubt about Judge Bobb’s impartiality if he or she had been aware of her participation in the Philharmonic with Sallus. We disagree.

Section 1281.9 imposes on arbitrators in California a duty to “disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial” and sets forth six specific facts required to be disclosed.³ (§ 1281.9, subd. (a).)

² All further section references are to the Code of Civil Procedure unless otherwise specified.

³ The required disclosures include: “(1) The existence of any ground specified in Section 170.1 for disqualification of a judge [¶] (2) Any matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter. [¶] (3) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for any party to the arbitration proceeding or for a

The California Supreme Court has held the six disclosure requirements under section 1281.9 are not exclusive, however. (*Advantage Medical Services, LLC v. Hoffman* (2008) 160 Cal.App.4th 806, 817.) The “person” referenced in section 1281.9 is “an objective, reasonable person.” (*Agri-Systems, Inc. v. Foster Poultry Farms* (2008) 168 Cal.App.4th 1128, 1140.) An arbitrator’s failure to disclose facts as required by section 1281.9 warrants vacation of his or her award. (§ 1286.2, subds. (a)(2) & (6); *Casden Park La Brea Retail LLC v. Ross Dress for Less, Inc.* (2008) 162 Cal.App.4th 468, 476-477; *Ovitz v. Schulman* (2005) 133 Cal.App.4th 830, 845.)

We review de novo the trial court’s order confirming the arbitration award. (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376, fn. 9; *Glaser, Weil, Fink, Jacobs & Shapiro, LLP v. Goff* (2011) 194 Cal.App.4th 423, 433.) To the extent the trial court’s decision to grant the petition to confirm rests on its determination of disputed factual issues, however, we review the court’s orders under the substantial evidence standard. (*Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1217;

lawyer for a party and the results of each case arbitrated to conclusion [¶] (4) The names of the parties to all prior or pending noncollective bargaining cases involving any party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion [¶] (5) Any attorney-client relationship the proposed neutral arbitrator has or had with any party or lawyer for a party to the arbitration proceeding. [¶] (6) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party.” (§ 1281.9, subd. (a).)

Lindenstadt v. Staff Builders, Inc. (1997) 55 Cal.App.4th 882, 892, fn. 7.)

Appellant relies on *Mt. Holyoke Homes, L.P. v. Jeffer Mangels Butler & Mitchell LLP* (2013) 219 Cal.App.4th 1299 (*Mt. Holyoke Homes*) for the proposition that disclosure was required in this case. Appellant is correct that this case is instructive to the issue at hand. However, it does not support his position. Neither does *Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641 (*Nemecek*), which presents substantially similar facts.

In *Mt. Holyoke Homes*, the plaintiffs were former clients of the defendant law firm seeking to vacate an arbitration award. Subsequent to the arbitration, the clients discovered that the arbitrator had failed to disclose a publicly posted resume in which he listed a partner in the firm as a reference. (*Mt. Holyoke Homes, supra*, 219 Cal.App.4th at p. 1313.) The court held the disclosure was required because it created an appearance of partiality under section 281.9, reasoning, “the connection between the undisclosed fact of the arbitrator’s naming an attorney as a reference on his resume and the subject matter of the arbitration, a legal malpractice action against the law firm in which the same attorney is a partner, is sufficiently close that a person reasonably could entertain a doubt that the arbitrator could be impartial.” (*Id.* at pp. 1314-1315.)

In *Nemecek*, this court concluded an arbitrator’s participation in the executive committee of the appellate courts section of the Los Angeles County Bar Association with a witness did not require disclosure. (*Nemecek, supra*, 208 Cal.App.4th at pp. 647-648.) The committee consisted of 186 members and met regularly to provide continuing legal education and networking

opportunities. (*Ibid.*) There was no indication of any personal or profession relationship between the arbitrator and the witness other than membership in that committee, which was “too ‘slight or attenuated’” to require disclosure. (*Ibid.*) In reaching this decision, *Nemecek* relied on a number of cases which have held that mere membership in a professional organization need not be disclosed absent a personal relationship. (*Luce, Forward, Hamilton & Scripps, LLP v. Koch* (2008) 162 Cal.App.4th 720; *Michael v. Aetna Life & Casualty Ins. Co.* (2001) 88 Cal.App.4th 925, 939-940 [“Membership in a professional organization does not provide a credible basis for inferring an impression of bias.”]; *Ray Wilson Co. v. Anaheim Memorial Hospital Assn.* (1985) 166 Cal.App.3d 1081, 1088 [“The fact that an arbitrator and a party to the arbitration are members of the same professional organization ‘is in itself hardly a credible basis for inferring even an impression of bias.’”] disapproved on another ground by *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 27; *San Luis Obispo Bay Properties, Inc. v. Pacific Gas & Elec. Co.* (1972) 28 Cal.App.3d 556, 567 [no disclosure required where arbitrator and party’s appraiser belonged to the same professional organization].)

There is no similarly “close” or personal relationship resulting from Judge Bobb’s participation in the Philharmonic with Sallus. As in *Nemecek* and the cases cited within, their membership in the Philharmonic is too “slight and attenuated” to require disclosure. Substantial evidence supports the trial court’s findings. The trial court specifically found Judge Bobb and Sallus’ declarations to be credible. There was no opportunity for Judge Bobb or Sallus to do anything more than exchange pleasantries on the rare occasion their paths crossed.

This limited interaction did not create a personal relationship which required disclosure. These facts are distinct from *Mt. Holyoke Homes*, where the arbitrator's reliance on the attorney as a reference suggested a close relationship which should have been disclosed. Given these circumstances, we conclude disclosure was not required.

Our conclusion is unchanged even taking into consideration Appellant's contention that Sallus and Judge Bobb were not merely members of the Lawyers Philharmonic. Instead, Sallus was on its board of directors while Judge Bobb was its lead violinist. Notwithstanding the fact that there is no evidence in the record to show they occupied these positions at the Philharmonic at the relevant time,⁴ we fail to see how this changes the analysis. Appellant presents no evidence that a member of the board of directors and the lead violinist would have greater interaction or a closer relationship than the one described in Judge Bobb and Sallus' declarations.

Neither are we convinced reversal is warranted because the disclosures that Appellant did receive were allegedly untimely. Appellant has forfeited the issue; he proceeded with the arbitration without objection. (*United Health Centers of San Joaquin Valley, Inc. v. Superior Court* (2014) 229 Cal.App.4th 63, 85 ["While an arbitrator has a duty to disclose all of the details required to be disclosed pursuant to section 1281.9 and the Ethics Standards, a party aware that a disclosure is incomplete or

⁴ In his opening brief, Appellant cites to his own brief below in opposition to the petition to confirm, which cites in turn to a page on the Philharmonic's website as of March 31, 2015. Even if this "evidence" had been admitted below, which it was not, it is irrelevant to an award made in 2014.

otherwise fails to meet the statutory disclosure requirements cannot passively reserve the issue for consideration after the arbitration has concluded. Instead, the party must disqualify the arbitrator on that basis before the arbitration begins.”]; *Cummings v. Future Nissan* (2005) 128 Cal.App.4th 321, 329.)

In any case, a review of the record shows Appellant received the disclosures twice: once, when it was faxed to his probate attorney on December 20, 2013, during which time the attorney was helping Appellant to set up the arbitration, and again, when it was faxed to the attorney he hired to represent him in the arbitration on March 19, 2014. The arbitration occurred on March 20, 2014. Appellant was timely served with Judge Bobb’s disclosures on December 20, 2013.

DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

BIGELOW, P.J.

We concur:

GRIMES, J.

SORTINO, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.